



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

The President

DECISION No EX-06-5 OF THE PRESIDENT OF THE OFFICE

of 3 July 2006

concerning the electronic filing of oppositions

THE PRESIDENT OF THE OFFICE FOR HARMONIZATION IN THE
INTERNAL MARKET (TRADE MARKS AND DESIGNS),

Having regard to Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (hereinafter referred to as ‘the Implementing Regulation’), in particular Rule 82 (4) and Rule 91 (2) thereof,

Whereas Decision No EX-02-2 of the President of the Office of 7 November 2002, as amended by Decision No EX-04-3 of 26 November 2004 and Decision No EX-05-3 of 10 October 2005, has provided for the availability of electronic filing of Community trade mark applications through the Internet, and in particular laid down the admissible formats of annexes to electronically filed applications,

Whereas it is appropriate to amend the rules concerning electronic filing of Community trade mark applications through the Internet also in other respects so as to take account of practical experiences and with a view to further clarify that a confirmation of transaction and a receipt will be sent as a separate communication and depending on the profile of the applicant; in particular, it is useful to mention notifications through the MYPAGE mailbox (“MyMAILBOX”) as foreseen in Decision No EX-04-6 of the President of the Office of 14 December 2004 concerning notification by technical means,

Whereas the third version of this electronic filing system is being launched in June 2006 with the introduction of electronic filing of oppositions, that will allow users to file their oppositions and send their associated attachments online,

Whereas it is appropriate to amend Decision No EX-02-2 of the President of the Office of 7 November 2002 accordingly,

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

The title of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be replaced by the following:

“Decision No EX-02-2 of the President of the Office of 7 November 2002 concerning the electronic filing of Community trade mark applications and of oppositions”

Article 2

The first Whereas of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be replaced by the following:

“Whereas the Office will make available the electronic filing of Community trade marks applications and of oppositions through the Internet”.

Article 3

The third Whereas of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be replaced by the following;

“Whereas the electronic filing of Community trade mark applications and of oppositions will consist of electronic files sent to the Office through the Internet”.

Article 4

Article 1 of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be replaced by the following:

“Article 1

Electronic filing of Community trade mark applications and of oppositions

(1) As from 12 November 2002, Community trade mark applications may be filed electronically through the Internet (hereafter “electronic applications”).

(2) As from June 2006, oppositions may be filed electronically through the Internet (hereafter “electronic oppositions”).

(3) The filing through the Internet shall consist of sending through the Internet the completed CTM application form or opposition form made available on the Office’s website under the following address:

<http://oami.europa.eu/en/default.htm>

(4) The filing may contain attachments in accordance with Article 4.”

Article 5

Article 2 of Decision No EX-02-2 of the President of the Office of 7 November 2002

(OJ OHIM 2003, 14) shall be replaced by the following:

*“Article 2
Batch filing*

The Office may allow the filing of electronic applications or oppositions through the Internet through the communication of data in another form than by transmission of an electronic application or opposition form as provided for in Article 1, and to another address than the address referred to in Article 1(2), under technical conditions to be agreed on with each applicant or opponent concerned, to the extent that this is appropriate so as to render the filing of large quantities of applications or oppositions more efficient.”

Article 6

Article 3 of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be replaced by the following:

*“Article 3
Date of receipt*

An electronic application or opposition filed through the Internet shall be deemed to have been received by the Office on the day on which the data are received by the electronic data processing system of the Office, provided that they can be processed by the Office.”

Article 7

Article 4 of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be replaced by the following:

*“Article 4
Attachments*

(1) Attachments to the electronic application form:

(a) Where the applicant does not wish to claim any special graphic feature or colour (Rule 3 (1) of the Implementing Regulation), the trade mark shall be indicated as a “word mark”, and the respective field in the electronic application form shall be filled in. In all other cases, the graphic representation shall be filed as an attachment to the electronic application form. The graphic representation shall be in the .jpeg data format.

(b) Where registration of a sound mark is applied for, one sound file containing the sound may be filed as an attachment to the electronic application form. The sound file shall be in the .mp3 format. Its size shall not exceed one Megabyte. It shall not allow loops or streaming.

(c) Documents in support of a priority claim or a seniority claim in accordance with Rule 6 (1) or Rule 8 (1) of the Implementing Regulation, also in conjunction with Decision No EX-03-5 of the President of the Office of 20 January 2003 and Decision

No EX-05-5 of the President of the Office of 1 June 2005, regulations governing the use of a collective mark in accordance with Article 65 of the Community Trade Mark Regulation, and the indications referred to in Rule 124 of the Implementing Regulation, may be sent as attachments to the electronic application form. Such attachments shall be in the .pdf or .jpeg data format.

(2) Attachments to the electronic opposition form:

(a) Documents in support of an opposition in accordance with Rule 15 of the Implementing Regulation shall be sent as attachments to the electronic opposition form.

(b) Graphic representations of earlier mark or earlier right shall be in the .jpeg data format.

(c) Sound files shall be in the .mp3 format. Its size shall not exceed one Megabyte. It shall not allow loops or streaming.

(d) Other attachments may be in the .pdf or .jpeg format, and the maximum size is two Megabytes per attachment.

(e) The maximum size of all attachments is five Megabytes.

(3) Any other attachments, or any attachments that do not comply with paragraphs 1 or 2, shall be deemed not to have been filed.”

Article 8

Article 5 of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be amended as follows:

“Article 5

Confirmation of successful submission and receipt

(1) Confirmation of successful submission and receipt of an electronic application:

(a) Immediately upon receipt by the Office, a confirmation of successful submission shall be issued to the sender, indicating the date and hour of reception of the submission and the file number of the application.

(b) A receipt shall further be sent as a separate communication in accordance with Rule 5 (1) of the Implementing Regulation, via fax or post or through MYPAGE mailbox (MyMAILBOX), depending on the profile of the applicant. It shall be accompanied by a copy of the application as filed and a statement that the date of receipt will also be the filing date provided that the basic application fee is paid in time.

(2) Confirmation of successful submission and receipt of an electronic opposition:

(a) Immediately upon receipt by the Office, a confirmation of successful submission shall be issued to the sender, indicating the date and hour of reception of the submission and the opposition number.

(b) A receipt shall further be sent as a separate communication, via fax, post or through MYPAGE Mailbox (MyMAILBOX), depending on the profile of the opponent”.

Article 9

Article 6 of Decision No EX-02-2 of the President of the Office of 7 November 2002 (OJ OHIM 2003, 14) shall be amended as follows:

“Article 6

The electronic application or opposition as part of the files

On receipt of the electronic application or opposition, its content shall be imported into the database of the Office and shall be converted into a graphic file which represents the appearance of the electronic application or opposition form on the screen of the computer of the applicant. This graphic file shall constitute the Community trade mark application or the opposition as a part of the files relating to the Community trade mark application or opposition and as the subject of inspection of files (Rule 89 (1), (4), (5) of the Implementing Regulation).”

Article 10**Entry into force**

This decision shall enter into force on the day of its adoption. It shall be published in the Official Journal of the Office.

Done at Alicante, 3 July 2006

Wubbo de Boer
President